

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JAN 7 2015
CLERK

RONALD MCNAMARA,	*	CIV. 15 - 4002
	*	
Plaintiff,	*	
	*	
vs.	*	COMPLAINT AND DEMAND
	*	FOR TRIAL BY JURY
PROFESSIONAL TRANSPORTATION,	*	
INC.,	*	
	*	
Defendant.	*	

Plaintiff Ronald McNamara (hereafter referred to as "Plaintiff"), brings this action for damages and other legal and equitable relief from Defendant Professional Transportation, Inc. is (hereafter referred to as "Defendant") for violation of various laws, including but not limited to, allowing disability discrimination at its place of employment and for such other causes of action against the Defendant as hereinafter stated. Plaintiff alleges the following as his claims against the Defendant.

JURISDICTION

1. Plaintiff, a qualified individual who developed a disability while working for Defendant, brings this action under 42 U.S.C. §§ 12112, 12117 ("Americans with Disabilities Act" or "ADA") and 28 U.S.C. §§ 1331, 1337 & 1343, under the provisions of 28 U.S.C. §1367 and also pursuant to S.D.C.L. § 20-13-10 to redress the wrongs done to him by Defendant as a result of Defendant's discriminatory actions based on Plaintiff's disability and for failing to make reasonable accommodations for Plaintiff's

disability as an applicant for employment with Defendant.

2. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction for the state claims asserted herein.

3. On May 8, 2014, Plaintiff timely filed a Charge of Discrimination against Defendant on the basis of disability to the South Dakota Division of Human Rights. A true and correct copy of this Charge is attached as Exhibit A and incorporated herein by reference.

4. On October 16, 2014 a "Notice of Right to Sue" from the Equal Employment Opportunity Commission on the charges was mailed to Plaintiff. A true and correct copy of this notice is attached as Exhibit B and incorporated by reference.

5. Venue for all causes of action stated herein lies in the Southern Division of the District of South Dakota as the acts alleged as a basis for federal claims took place within the boundaries of that district.

PARTIES

6. Plaintiff is a "qualified individual with a disability" as that term is defined by the ADA at all times material hereto. Defendant was at all times material hereto a Indiana corporation doing business in South Dakota as Professional Transportation, Inc. and was an "employer" within the State of South Dakota and within the jurisdictional coverage of the Americans with Disabilities Act and S.D.C.L. § 20-13-1(7).

FACTS

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

7. Plaintiff was hired as a Branch Manager for Defendant in 2013. He was

salaried and told he would be working 50 hours a week. In fact, he was forced to work 80 to 100 hours a week and forced to take hourly phone calls on his “off” hours.

8. Plaintiff became depressed and run down, for which he sought medical care beginning in November of 2013.

9. On December 30, 2013, with no accommodations having been made by Defendant in Plaintiff's work requirements, Plaintiff forwarded a letter to Defendant from his doctor taking him off work for January 1, 2014 through February 7, 2014 for depression caused by sleep deprivation.

10. On December 31, 2013, after receiving notice from Plaintiff's doctor, Defendant failed to engage in any interactive process or discussions with Plaintiff to determine what accommodations could be made. Instead, Plaintiff was terminated.

COUNT ONE

VIOLATION OF TITLE 1 OF THE AMERICANS WITH DISABILITIES ACT – FAILURE TO REASONABLY ACCOMMODATE

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

11. Defendant is an “employer” within the meaning of ADA.

12. Defendant's Corporation is engaged in an “industry affecting commerce” within the meaning of the ADA and the Civil Rights Act of 1964.

13. Due to the sleep deprived depression caused by his work, Plaintiff is an individual with a “disability,” as that term is defined by ADA.

14. Plaintiff is a “qualified person with a disability” within the meaning of the ADA, 42 U.S.C. § 12111(8), as he is an individual with a disability who, with or without

reasonable accommodations, can perform the essential functions of various positions for Defendant.

15. Plaintiff's depression and other mental health issues related to sleep deprivation is a major life activity under 42 U.S.C. § 12112(a).

16. Defendant refused to reasonably accommodate Plaintiff's request for time off or any other accommodation as required by the ADA, 42 U.S.C. § 12112(b)(5).

17. Defendant's action toward Plaintiff on the basis of his disability constitutes a discriminatory act prohibited by the ADA, 42 U.S.C. § 12112(a).

18. The unlawful employment practices complained of above were intentional and/or were done with malice or reckless indifference to the federally protected rights of the Plaintiff.

19. Defendant's discriminatory actions toward Plaintiff based on his disability have caused Plaintiff to suffer damages, including loss of past and future wages, and other employment benefits.

20. Defendant's discriminatory actions toward Plaintiff based on his disability have caused Plaintiff to suffer past and future substantial damages for mental anguish, loss of enjoyment of life and other non-pecuniary losses.

21. Under ADA, U.S.C. § 12117(a), which incorporates by reference the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, Plaintiff is entitled to back pay and lost benefits as well as front pay.

22. Under 42 U.S.C. § 1981(a) and 42 U.S.C. § 12117(a), Plaintiff is entitled to recover compensatory damages, including damages for emotional pain, mental anguish, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

23. Because of Defendant's discriminatory conduct was intentional and/or was taken with malice or reckless indifference to the Plaintiff's federally protected rights, Plaintiff is entitled to recover punitive damages.

24. Under 42 U.S.C. § 12205, Plaintiff is entitled to his reasonable attorney's fees, litigation expenses and costs incurred in this action.

COUNT TWO

VIOLATION OF S.D.C.L. § 20-13-10

Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges that:

25. Defendant is an "employer" at all times material herein within the meaning of S.D.C.L. § 20-13-1(7).

26. Due to Plaintiff's work related depression caused by sleep deprivation, Plaintiff is an individual with a "disability" as that term is defined under S.D.C.L. § 20-13-1(4).

27. Defendant failed to reasonably accommodate Plaintiff's disability.

28. Defendant's actions toward Plaintiff on the basis of his disability constitutes an unfair or discriminatory employment practice prohibited by S.D.C.L. § 20-13-10.

29. The unlawful employment practices complained of above were intentional and/or were done with malice or reckless indifference to the rights set in place by the law of the State of South Dakota.

30. Defendant's discriminatory actions toward Plaintiff based on his disability have caused Plaintiff to suffer damages, including lost past and future wages, and other

employment benefits.

31. Defendant's discriminatory actions toward Plaintiff based on his disability have caused Plaintiff to suffer past and future substantial damages for mental anguish, loss of enjoyment of life and other non-pecuniary losses.

32. Under S.D.C.L. § 20-13-35.1, Plaintiff is entitled to compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as to follows:

- A. For Plaintiff's past pecuniary losses, including the loss of wages and benefits in an amount to be determined at trial;
- B. For front pay in an amount to be determined at trial;
- C. For Plaintiff's compensatory damages in an amount to be determined at trial;
- D. For punitive damages in an amount to be determined at trial;
- E. For attorneys, fees, costs and disbursements incurred here in; and
- F. For such other and further relief as the Court deems just and equitable under the circumstances.

Dated at Sioux Falls, South Dakota, this 7th day of January, 2015

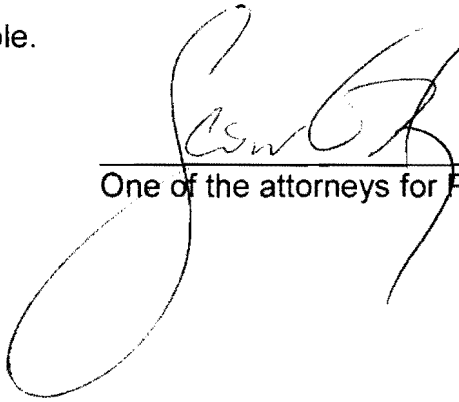
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DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, by and through one of his counsel of record, and pursuant to Federal Rule of Civil Procedure 38(b)(1), hereby respectfully demands trial by jury of all issues so triable.



One of the attorneys for Plaintiff